

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANTS: Buster Land LLC; Hooker Cattle Co. Inc.; **GRR
Farms LLC; State of Montana Board of Land
Commissioners**

CASE 40A-0102-R-2022
40A 25109-00

OBJECTOR: State of Montana Board of Land Commissioners

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 40A 25109-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claim received an issue remark. Issue remarks result from Department of Natural Resources and Conservation ("DNRC")

claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. The claim also received an objection from the State of Montana Board of Land Commissioners.

The Court consolidated this claim into Water Court Case 40A-0102-R-2022 on April 4, 2022. The Court issued an order setting a settlement deadline on May 11, 2022. On July 25, 2022, the parties filed a stipulation for co-ownership. The Court subsequently issued an order requesting information regarding the issue remark on the claim. Claimant Hooker Cattle Co. Inc. filed additional evidence and a brief on March 2, 2023. The Court notes the ownership of the claim as changed through an ownership update. The caption and service list have been updated to reflect the update.

FINDINGS OF FACT

1. Claim 40A 25109-00 appeared with the following issue remark:

THIS ABSTRACT DOES NOT APPEAR TO REFLECT PRE-1973 WATER USE. RATHER, IT REFLECTS POST-1973 CHANGES THAT WERE MADE TO THE WATER RIGHT. IT APPEARS MORE LIKELY THE PRE-1973 PURPOSE IS OIL DRILLING AND THE PRE-1973 PLACE OF USE IS NESENW SEC 19 TWP 9N RGE 20E GOLDEN VALLEY CO. IT IS UNCLEAR WHAT THE PRE-1973 VOLUME FOR THIS WATER RIGHT IS.

2. The State of Montana Board of Land Commissioners objected to the ownership of Claim 40A 25109-00.
3. The parties request in their stipulation that the Court add the State of Montana as co-owner of the claim.
4. Claim 40A 25109-00 is for stock water diverted by means of a well with a priority date of June 19, 1949.
5. The original statement of claim form, filed June 16, 1980, was signed by Helen M. Bever and completed by Edward R. Hawthorne.
6. Support for the claim is the sworn affidavit of Steve Schanz dated July 21, 1981. Mr. Schanz states in the affidavit that in 1949 a groundwater well was drilled for

the purpose of stock water. The point of diversion was in the NESENW of Section 19, T9N, R20E in Golden Valley County.

7. The claim file for the above-captioned claim contains a letter to the Water Court authored by Edward R. Hawthorne and dated April 14, 1980. Mr. Hawthorne indicates in the letter that the well was originally drilled for mineral extraction by Amarada Oil Company.

8. Subsequent attempts by the DNRC to gather further information in response to Mr. Hawthorne's letter did not yield further evidence.

9. The claim file also contains an Authorization to Change Appropriation. The Authorization mentions Amarada Oil Company but does not mention when a change in purpose or place of use occurred.

10. Although the Hawthorne letter contradicts the original statement of claim form and sworn affidavit, the accuracy of Mr. Hawthorne's statements were not ascertained. Further, if the well actually was drilled for mineral extraction and was later changed to supply water for livestock, it is unclear when that change occurred. If the change occurred before July 1, 1973, there is no evidence any neighboring water users were harmed by such a change.

11. Place of Use No. 6 of the above-captioned claim is located in Section 36, T9N, R19E. The parties stipulate that the General Land Office survey of the relevant parcel was accepted on November 4, 1874. The parties stipulate that the State of Montana acquired title to the parcel described by Place of Use No. 6 on November 8, 1889. The parties request the State of Montana be added as a co-owner of the above-captioned claim. The stipulation indicates the objection would be resolved by approval of this agreement.

12. The State of Montana Board of Land Commissioners should be added as a co-owner of the above-captioned claim.

13. The issue remark should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a

preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties may confer with each other and exchange information before the case is put on a hearing track. Parties may file settlement documents during these initial settlement proceedings. Rule 16(a), W.R.Adj.R.

3. If a Claimant agrees to reduce an element of their claim, the Court does not need to make a determination as to whether the burden of proof has been met. Rule 17(c), W.R.Adj.R.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

5. The Water Court is not bound by any settlement or stipulation filed to resolve objections. Rule 17(a), W.R.Adj.R. If a settlement seeks to expand or enlarge an element of a claim, the parties must present evidence sufficient to meet the appropriate burden of proof. Rule 17(b), W.R.Adj.R. If a Claimant agrees to reduce or limit an element of a claim, the Court may accept the requested modification without further evidence overcoming the appropriate burden of proof. Rule 17(c), W.R.Adj.R.

6. The State of Montana holds title to water rights perfected on state school trust lands if the water right was perfected after the State gained title to the land. See *Department of State Lands v. Pettibone*, 216 Mont. 361, 702 P.2d 948 (1985).

CONCLUSIONS OF LAW

1. The Court may add the State of Montana as a co-owner of the above-captioned claim because *Pettibone* applies. The parties agree that the State should be added pursuant to *Pettibone*.

2. The issue remark may be removed as resolved because the issue remark and information leading to the placement of the issue remark do not overcome the prima facie statement of the claim. The sworn affidavit and statement of claim form indicating the

well was used for stock water before July 1, 1973 are not overcome by an unsworn letter and change authorization.

3. The objection is resolved by adding the State of Montana as a co-owner to the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

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Note: Caption and Service List Updated 4-19-23

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 25109-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: MONTANA STATE BOARD OF LAND COMMISSIONERS
TRUST LAND MANAGEMENT DIVISION
PO BOX 201601
HELENA, MT 59620 1601

HOOKE CATTLE CO INC
873 HEDGESVILLE RD
RYEGATE, MT 59074 9601

BUSTER LAND LLC
73 HICKORY HILL LN
FISHERSVILLE, VA 22939

GRR FARMS LLC
PO BOX 2
ORRVILLE, OH 44667 0002

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: JUNE 19, 1949

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: 20.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR
STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL
UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND
HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENW	19	9N	20E	GOLDEN VALLEY

Period of Diversion: MARCH 1 TO DECEMBER 1

Diversion Means: WELL

Period of Use: MARCH 1 TO DECEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			E2	25	9N	19E	GOLDEN VALLEY
2			NE	36	9N	19E	GOLDEN VALLEY
3			NW	19	9N	20E	GOLDEN VALLEY

4	W2	29	9N	20E	GOLDEN VALLEY
5	N2	30	9N	20E	GOLDEN VALLEY
6	N2	31	9N	20E	GOLDEN VALLEY